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HOUSE BILL 739

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO MOTOR CARRIER INSURANCE; REQUIRING INCIDENTAL CARRIERS TO PROVIDE EVIDENCE OF FINANCIAL RESPONSIBILITY TO THE PUBLIC REGULATION COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-2A-3 NMSA 1978 (being Laws 2003, Chapter 359, Section 3) is amended to read:

"65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "amendment" means a permanent change in the type of service or territory authorized by an existing certificate or permit;

B. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

C. "base state" means the registration state for an interstate motor carrier that either is subject to regulation

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1 or is transporting commodities exempt from regulation by the
2 federal motor carrier safety administration pursuant to the
3 single state registration system;

4 D. "cancellation" means the voluntary, permanent
5 termination of all or part of an operating authority;

6 E. "certificate" means the operating authority
7 issued by the commission to intrastate common motor carriers of
8 persons or household goods;

9 F. "change in a certificate or permit" means the
10 amendment, cancellation, change in tariff, change in form of
11 ownership, lease, reinstatement, transfer or voluntary
12 suspension of a certificate or permit;

13 G. "change of name" means a change in the legal
14 name of the owner of an operating authority or in the does-
15 business-as name of the motor carrier, but does not include a
16 change in the form of ownership;

17 H. "commission" means the public regulation
18 commission;

19 I. "common control" means control of more than one
20 operating authority of the same kind for the same or
21 overlapping territory;

22 J. "common motor carrier" means a person offering
23 compensated transportation by motor vehicle to the general
24 public, whether over regular or irregular routes, or under
25 scheduled or unscheduled service, but does not include commuter

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1 services;

2 K. "common tariff" means a tariff applying to two
3 or more common motor carriers;

4 L. "commuter service" means a person who provides
5 seven- to fifteen-passenger motor vehicles to a volunteer-
6 driver commuter group that [~~share~~] shares rides to and from the
7 workplace or training site, where participation is open to the
8 public and incidental to the primary work or training-related
9 purposes of the commuter group, and where the volunteer drivers
10 have no employer-employee relationship with the commuter
11 service;

12 M "contract motor carrier" means a person offering
13 compensated transportation by motor vehicle under individual
14 agreements with particular customers or shippers;

15 N. "control" means the power to direct or cause the
16 direction of the management and policies of a motor carrier
17 deriving from:

18 (1) ownership of a sole proprietorship, if the
19 operating authority is held by an individual as a sole
20 proprietor;

21 (2) ownership of ten percent or more of the
22 voting stock of the corporation, if the operating authority is
23 held by a corporation;

24 (3) a partnership interest in a general
25 partnership, if the operating authority is held by a general

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1 partnership;

2 (4) an interest in a limited partnership of
3 ten percent or more of the total value of contributions made to
4 the limited partnership, or entitlement to ten percent or more
5 of the profits earned or other compensation paid by the limited
6 partnership, if the operating authority is held by a limited
7 partnership;

8 (5) a membership interest of ten percent or
9 more in a limited liability company, if the operating authority
10 is held by a limited liability company; or

11 (6) capacity as a trustee, personal
12 representative or other person with a fiduciary duty to a motor
13 carrier;

14 0. "electronic filing" means submission of a
15 document by facsimile, electronic mail or other electronic
16 transmission;

17 P. "financial responsibility" means the ability to
18 respond in damages for liability arising out of the ownership,
19 maintenance or use of a motor vehicle in the provision of
20 transportation services;

21 Q. "highway" means a way or place generally open to
22 the use of the public as a matter of right for the purpose of
23 vehicular travel, even though it may be temporarily closed or
24 restricted for the purpose of construction, maintenance, repair
25 or reconstruction;

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1 R. "household goods" means personal effects and
2 property used or to be used in a dwelling when a part of the
3 equipment or supply of the dwelling and other similar property
4 as the federal motor carrier safety administration may provide
5 by regulation, but shall not include property moving from a
6 factory or store, other than property the householder has
7 purchased to use in his dwelling that is transported at the
8 request of, and the transportation charges are paid to the
9 carrier by, the householder;

10 S. "incidental carrier" means a motor carrier that
11 provides services for which the motor carrier charges at the
12 time the service is rendered and that transports the public
13 incidentally to that service, regardless of whether that
14 transportation is without charge;

15 ~~[S.]~~ T. "interested person" means a motor carrier
16 operating over the routes or in the territory involved in an
17 application or grant of temporary authority, a person affected
18 by a rule proposed for adoption by the commission or a person
19 the commission may deem interested in a particular matter;

20 ~~[T.]~~ U. "interstate motor carrier" means a person
21 providing compensated transportation in interstate commerce,
22 whether or not the person is subject to regulation by the
23 federal motor carrier safety administration;

24 ~~[U.]~~ V. "intrastate motor carrier" means a person
25 providing compensated transportation by motor vehicle between

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1 points and places in the state;

2 [V-] W. "involuntary suspension" means the
3 temporary cessation of use of all or part of an operating
4 authority ordered by the commission for cause for a stated
5 period of time or pending compliance with certain conditions;

6 [W-] X. "irregular route" means that the route to
7 be used by a motor carrier is not restricted to a specific
8 highway within the territory the motor carrier is authorized to
9 serve;

10 [X-] Y. "lease of a certificate or permit" means an
11 agreement by which the owner of a certificate or permit grants
12 to another the exclusive right to use all or part of the
13 certificate or permit for a specified period of time in
14 exchange for consideration;

15 [Y-] Z. "lease of equipment" means an agreement
16 whereby a motor carrier obtains equipment owned by another for
17 use by the motor carrier in the exercise of its operating
18 authority;

19 [Z-] AA. "motor carrier" means a person offering
20 compensated transportation of persons or property by motor
21 vehicle, whether in intrastate or interstate commerce;

22 [AA-] BB. "motor carrier organization" means an
23 organization approved by the commission to discuss and propose
24 a common tariff for a group of motor carriers or to represent
25 motor carriers that have adopted the common tariff;

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1 ~~[BB.]~~ CC. "motor carrier of persons" means a person
2 who provides compensated transportation of persons on a highway
3 in the state;

4 ~~[CC.]~~ DD. "motor vehicle" means a vehicle, machine,
5 tractor, trailer or semitrailer propelled or drawn by
6 mechanical power and used on a highway in the transportation of
7 property or persons, but does not include a vehicle, locomotive
8 or car operated exclusively on rails;

9 ~~[DD.]~~ EE. "nonconsensual tow" means the compensated
10 transportation of a motor vehicle by a towing service, if such
11 transportation is performed at the request of a law enforcement
12 officer or without the prior consent or authorization of the
13 owner or operator of the motor vehicle;

14 ~~[EE.]~~ FF. "operating authority" means a
15 certificate, permit, warrant, single trip ticket, single state
16 registration receipt or temporary authority issued by the
17 commission to a motor carrier;

18 ~~[FF.]~~ GG. "permit" means the operating authority
19 issued by the commission to intrastate contract motor carriers
20 of persons or household goods;

21 ~~[GG.]~~ HH. "process" means an order, subpoena or
22 notice issued by the commission or an order, subpoena, notice,
23 writ or summons issued by a court;

24 ~~[HH.]~~ II. "property" means movable articles of
25 value, including cadavers, hazardous matter, farm products,

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1 livestock feed, stock salt, manure, wire, posts, dairy
2 products, livestock hauled in lots of twenty-five thousand
3 pounds or more, farm or ranch machinery and the items
4 transported by a towing service, but does not include household
5 goods or unprocessed farm products transported by a farmer from
6 the place of harvesting to market, storage or a processing
7 plant;

8 [H.] JJ. "protest" means a document filed with the
9 commission by an interested person that expresses an objection
10 to a matter before the commission;

11 [JJ.] KK. "rate" means a form of compensation
12 charged, whether directly or indirectly, by a person for a
13 transportation service subject to the jurisdiction of the
14 commission;

15 [KK.] LL. "record" means an account,
16 correspondence, memorandum, tape, disc, paper, book or
17 transcribed information regarding the operation of a motor
18 carrier;

19 [LL.] MM. "registration year" means a calendar
20 year;

21 [MM.] NN. "regular route" means a route used by a
22 motor carrier within the territory in which the motor carrier
23 is authorized to serve that is fixed by its operating
24 authority;

25 [NN.] OO. "revocation" means the involuntary,

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1 permanent termination of all or part of an operating authority
2 ordered by the commission for cause;

3 ~~[00-]~~ PP. "shipper" means a person who consigns or
4 receives goods for transportation;

5 ~~[PP-]~~ QQ. "single state registration receipt" means
6 the document issued annually to a motor carrier operating in
7 interstate commerce evidencing that proof of financial
8 responsibility and safety has been filed with the base state
9 and that the annual per vehicle fees have been paid for that
10 registration year;

11 ~~[00-]~~ RR. "tariff" means a document filed by a
12 motor carrier of persons or household goods or a towing service
13 performing nonconsensual tows that has been approved by the
14 commission and sets forth the transportation services offered
15 by the motor carrier to the general public, including the
16 rates, terms and conditions and applicable time schedules
17 relating to those services, including a common tariff;

18 ~~[RR-]~~ SS. "taxicab service" means a common motor
19 carrier engaged in unscheduled passenger transportation in a
20 motor vehicle having a capacity of not more than eight
21 passengers, including the driver, not operated on a regular
22 route or between specified places, and that:

23 (1) is licensed as a taxicab service by a
24 state or local jurisdiction; or

25 (2) if not licensed or regulated by a state or

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1 local jurisdiction as a taxicab service, is offered by a person
2 that:

3 (a) provides local transportation for a
4 fare determined, except with respect to transportation to or
5 from airport, train or bus terminals, primarily on the basis of
6 the distance traveled; and

7 (b) does not primarily provide
8 transportation to or from one or more airport, train or bus
9 terminals;

10 ~~[SS.]~~ TT. "terminal shuttle service" means a common
11 motor carrier engaged in passenger transportation service that:

12 (1) is prearranged by contract or operated by
13 hire on a regular route, allowing for deviation to pick up or
14 drop off passengers, between specified or generally specified
15 points; and

16 (2) primarily provides transportation to or
17 from one or more airport, train or bus terminals but may also
18 provide for intermediate pickup or departure of passengers;

19 ~~[TT.]~~ UU. "towing services" means the use of
20 specialized equipment, including repossession services using
21 towing equipment, to transport:

22 (1) a damaged, disabled or abandoned motor
23 vehicle and its cargo;

24 (2) a motor vehicle to replace a damaged,
25 disabled or abandoned motor vehicle;

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1 (3) parts and equipment to repair a damaged,
2 disabled or abandoned motor vehicle;

3 (4) a motor vehicle whose driver has been
4 declared unable to drive by a law enforcement officer;

5 (5) a motor vehicle whose driver has been
6 removed from the scene or is unable to drive; or

7 (6) a motor vehicle repossessed or seized
8 pursuant to lawful authority;

9 [~~UU-~~] VV. "transfer of a certificate or permit"
10 means a permanent conveyance of all or part of a certificate or
11 permit;

12 [~~VV-~~] WW. "transfer by operation of law" means that
13 the ownership of or interest in a certificate or permit passes
14 to another by application of established rules of law;

15 [~~WW-~~] XX. "voluntary suspension" means the
16 commission-authorized cessation of use of all or part of a
17 certificate or permit at the request of the motor carrier for a
18 specified period of time;

19 [~~XX-~~] YY. "warrant" means the operating authority
20 issued by the commission to charter services, towing services,
21 commuter services and motor carriers of property; and

22 [~~YY-~~] ZZ. "weight-bumping" means the knowing and
23 willful statement of a fraudulent weight on a shipment of
24 household goods. "

25 Section 2. Section 65-2A-18 NMSA 1978 (being Laws 2003,

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1 Chapter 359, Section 18) is amended to read:

2 "65-2A-18. FINANCIAL RESPONSIBILITY. --

3 A. The commission shall prescribe minimum
4 requirements for financial responsibility for all motor
5 carriers, including incidental carriers pursuant to this
6 section.

7 ~~[A.]~~ B. A motor carrier or incidental carrier shall
8 not operate on the highways of this state without having filed
9 with the commission proof of financial responsibility in the
10 [forms] form and [amounts] amount as the commission shall by
11 rule prescribe. The maximum amount of financial
12 responsibility, as determined by the commission, for incidental
13 carriers shall not exceed that required of other motor
14 carriers.

15 ~~[B.]~~ C. In prescribing minimum requirements for
16 financial responsibility for motor carriers, the commission
17 shall consider:

18 (1) the creation of sufficient incentives to
19 motor carriers to maintain and operate their equipment in a
20 safe manner;

21 (2) the number of passengers being
22 transported;

23 (3) the nature of the transportation services
24 provided by the motor carrier; and

25 (4) other factors necessary to ensure that

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1 motor carriers maintain an appropriate level of financial
2 responsibility.

3 ~~[C.]~~ D. The commission may authorize a motor
4 carrier to carry its own insurance in lieu of filing a policy
5 of insurance, certificate showing the issuance of a policy of
6 insurance or a surety bond. In approving an application to be
7 self-insured, the commission shall consider:

8 (1) the financial stability of the carrier;

9 (2) previous loss history of the carrier;

10 (3) the safety record of the carrier;

11 (4) the size, nature of operations and other
12 operating characteristics of the carrier; and

13 (5) other factors necessary for the protection
14 of passengers, shippers and the public.

15 ~~[D.]~~ E. Notwithstanding any requirement of the New
16 Mexico Insurance Code to the contrary, the commission may
17 accept proof of public liability insurance from an insurer not
18 authorized in New Mexico if:

19 (1) the insurance is for an interstate motor
20 carrier transporting commodities exempt from regulation by the
21 federal motor carrier safety administration participating in
22 the single state registration system for those motor carriers;
23 and

24 (2) the insurer is authorized to write public
25 liability insurance in at least one other state.

